IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19-9-2007

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THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

W.P.No.20792 of 2007

and
MP Nos.1 and 2 of 2007

P.A.Doss .. Petitioner

vs

1.The District Welfare Officer
Kanchipuram District, Kanchipuram

2.The Special Tahsildar
Adi-Dravidar Welfare
Maduranthagam

3.The Principal Accountant General
Accounts & Entitlements
Tamilnadu, Chennai 600 010. .. Respondents

Writ petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the records of the 2nd respondent in his proceedings Na.Ka.No.164/2004 dated 15.7.2006 and quash the same and consequently direct the respondents to sanction the pension and other retirement benefits to the petitioner proportionate to basic scale (Rs.11025/-) on his date of retirement within a stipulated period.

For Petitioner : Mr.S.Sounthar
For Respondents : Mr.V.Arun
Additional Government
Pleader for RR1 & 2
Mr.T.Ravikumar
ACGSC for R3

ORDER

The petitioner seeks a writ of certiorarified mandamus to quash the proceedings of the second respondent made in Na.Ka.No.164/2004 dated 15.7.2006, and also to direct the respondents to sanction the pension and other retirement benefits.

2.The Court heard the learned Counsel on either side. The affidavit in support of the petition along with the grounds and the counter affidavit by the State are perused.

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3.The case of the petitioner in short is that he joined duty as Higher Grade Assistant under the first respondent in the year 1967; that he was promoted as Secondary Grade Assistant in the very same year; that subsequently, he was promoted as Secondary Grade Headmaster on 1.5.1968; that while he was working so, he was transferred as Wardan of Welfare Boys Hostel, Kadapakkam, on 14.11.1984; that subsequently, he was again re-transferred and posted as Headmaster on 7.7.1988; and that he worked as Headmaster, Welfare Primary School, Murunthagiri, and retired on 31.5.2004. It is the further case of the petitioner that he was eligible for pension and also other benefits in view of G.O.(Ms) No.185 Education Department, dated 16.12.2002; that originally, proposals were submitted through the School where he worked, to the second respondent, which was also placed before the third respondent, the Principal Accountant General, Accounts and Entitlements, Madras; that the same was actually returned with the query that the petitioner was not entitled to have the pensionary benefits on the strength of the G.O.No.185, since the petitioner should have been an Headmaster on the crucial date i.e., 1.6.1988; but, he was not so; that the papers were again placed by the second respondent before the third respondent; that despite the same, it has been returned; that following the same, recovery has been ordered, and under the circumstances, this writ petition has been brought forth before this Court.

4.Advancing his arguments on behalf of the petitioner, the learned Counsel inter alia would submit that it is not in controversy that while he was working as Headmaster in the Primary School, he was transferred as Warden, Welfare Boys Hostel, Kadapakkam, on 14.11.1984; that therefrom, he was re-transferred and posted as Headmaster, Welfare Primary School, Murunthagiri, on 7.7.1988; that thereafter, he served as Headmaster of the Welfare Primary School and retired on 31.5.2004; and that as per the G.O.No.185, Education Department, relied on by the department, the crucial date was 1.6.1988, and he should be the Headmaster on the very day.

5.Added further the learned Counsel that he was promoted and working as Secondary Grade Headmaster from 1.5.1968; that he was transferred as Warden, Welfare Boys Hostel, Kadapakkam, on 14.11.1984; that the said post was equal to that of the Headmaster; that he was again re-transferred to the post of the Headmaster, Welfare Primary School, Murunthagiri, in the year 1988; that he was actually not functioning as Headmaster on 1.6.1988 as mentioned in the G.O.No.185; but, he was in the equal post with equal pay on that day; that even the counter filed by the State, would clearly speak to the fact that they are all equal posts; that apart from that, when the first proposal was placed before the second respondent and returned by the third respondent, a clarification was made by the second respondent to the effect that the petitioner was transferred from the post of the Headmaster to that of Warden, since both the posts are equal; that under the circumstances, there cannot be any impediment for

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granting the benefits under the G.O.No.185, and hence, the writ has got to be ordered.

6.In answer to the above, it is contended by the learned Additional Government Pleader that in order to give application of G.O.No.185 and have the benefits of the same, the petitioner should have been working as Headmaster on 1.6.1988; that admittedly, he was not so; but, he was only working as a Warden on that date; that he was again re-transferred on 7.7.1988 as Headmaster; that so long as the petitioner is unable to show that he was working as Headmaster on 1.6.1988, he cannot have the benefit under the said G.O.; that when the proposals were placed before the third respondent, they have been rightly queried and returned; that under the circumstances, the petitioner is not entitled for the relief asked for, and hence, the petition has got to be dismissed.

7.The Court paid its anxious consideration on the submissions made and is of the considered opinion that the petitioner is entitled for the relief asked for. It is not in controversy that the petitioner who was appointed in 1967, on promotion, became a Secondary Grade Assistant in the very same year, and he was also promoted as Secondary Grade Headmaster on 1.5.1968. He was also transferred as Warden, Welfare Boys Hostel, Kadapakkam, on 14.11.1984, and again, he was re-transferred as Headmaster on 7.7.1988. At the outset, it has got to be stated that if the post of Headmaster of the Primary School and the Warden of the Welfare Boys Hostel, Kadapakkam, were not of the equal cadre, there was no question of transferring him that would arise. Further, the petitioner who was working as Warden, Welfare Boys School, was again re-transferred as Headmaster, Welfare Primary School, Murunthagiri, on 7.7.1988. If the posts are not of the same cadre, then he would not have been re-transferred.

8.After his retirement proposals for the pensionary benefits were placed by the second respondent before the third respondent, the third respondent has made a query that on 1.6.1988, he was not working as Headmaster, and hence, he could not have the benefits under G.O.No.185, and how he was eligible for the same. For such a query, the second respondent Special Tahsildar has given a reply on 8.3.2005, wherein it has been clearly stated that the petitioner who was working as Headmaster in the Primary School, was transferred as Warden, Welfare Boys Hostel, Kadapakkam, in November 1984 and re-transferred to the post of Headmaster, Welfare Primary School, Murunthagiri, because they are all equal posts. The fact that the proposal which was originally placed and returned and subsequently, it was clarified would suffice for the acceptance of the same. Instead, the third respondent has returned the proposals pursuant to which now, the recovery has been ordered as if excess payment has been made. The contention put forth by the learned Additional Government Pleader for the respondents 1 and 2 that the petitioner was not working as Headmaster on 1.6.1988; but, he was only a Warden, and

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hence, he cannot have the benefit of the G.O.No.185, cannot be countenanced for the simple reason that it has been categorically admitted not in one place, but more than one place in the counter that the petitioner has officiated in the combined cadre of Secondary Grade Headmaster, Secondary Grade Assistant, Primary School Headmaster and Warden.

9.Apart from the above, when he was working as Headmaster, there was no question of transferring him as Warden, if it was not equal post, and again, he was re-transferred from the post of Warden to the Headmaster. This would be indicative of the fact that the posts are equal, and that has been clearly clarified by the second respondent, Special Tahsildar. Under the circumstances, this Court is of the considered opinion that the return of the proposals originally placed by the second respondent before the third respondent, was not correct, and now, it has got to be again placed before the third respondent for the purpose of acceptance. Following the return, the recovery ordered by the second respondent, in the opinion of this Court, is illegal, since the petitioner is entitled to have the benefit under G.O.No.185 referred to above. According to the learned Counsel for the petitioner, no recovery was done. Hence, the second respondent is directed to place the proposals before the third respondent for the pensionary benefits of the petitioner as early as practicable, preferably within a period of twelve weeks from the date of receipt of a copy of this order or placing the copy of the order by the petitioner. The third respondent is also directed to pass suitable orders thereon within a period of four weeks therefrom.

10.Accordingly, this writ petition is allowed. No costs. Consequently, connected MPs are closed.

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Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

nsv/

To:

1.The District Welfare Officer
Kanchipuram District, Kanchipuram

2.The Special Tahsildar
Adi Dravidar Welfare
Maduranthagam

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3.The Principal Accountant General
Accounts & Entitlements
Tamilnadu, Chennai 600 010.

1 cc to the Government Pleader, Sr. 58551
1 cc to Mr.T. Ravikumar, ACGSC, SR. 57778
1 cc to Mr.S. Southar, Advocate, SR. 58866

WP No.20792 of 2007

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